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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION ONE

THE PEOPLE,

Plaintiff and Respondent,

v.

RANDALL MILLER,

Defendant and Appellant.

A155580

(Napa County
Super. Ct. No. CR177241)

Pursuant to a plea agreement, defendant Randall Miller pleaded no contest to four counts involving sex offenses committed against a minor. Defendant was sentenced in accordance with the plea agreement to a six-year prison term. He appealed and appellate counsel filed a brief pursuant to *People v. Wende* (1979) 25 Cal.3d 436 (*Wende*). We affirm.

FACTUAL AND PROCEDURAL SUMMARY

Defendant was a supervisor of the victim's mother at a winery in Napa. Defendant and the mother began an intimate relationship during which they went on several dates together at a time when the mother had separated from her husband. Defendant befriended the family, often taking the mother, her daughter, and her son out to lunch and dinner. The mother introduced her children to defendant in the hopes that he would help them get jobs at the winery. He did so, arranging special projects for the victim and her brother. The mother ended her relationship with defendant in January 2015, but they remained friends.

The victim's brother became suspicious of the relationship between the victim and defendant and alerted his parents. The brother later found e-mails between the victim and defendant that suggested an intimate relationship. The mother confronted defendant, who apologized, stated that he had made a mistake, and admitted touching the victim. The victim disclosed that her relationship with defendant had been sexual in nature and described various sexual encounters that took place between May and August, 2015. At that time, she was 16 years old. She also described her sexual activities with defendant to a friend and told the friend that defendant was committed to her, would wait for her, and that they might be able to be together once she finished college.

Defendant was charged by complaint with 11 counts involving sex offenses committed against a minor. A warrant was issued for his arrest. Defendant waived extradition from Tennessee, where he had relocated, and returned to California to face the charges. The preliminary hearing was held in January 2016. Defendant was held to answer and at the arraignment on March 4 pleaded not guilty to the charges.

After multiple continuances of jury trial, defendant entered into a plea agreement in June 2017. The trial court accepted his no contest pleas to four counts: counts one and three alleging penetration by a foreign object of a person under the age of 18 (Pen. Code,¹ § 289, subd. (h)), count four alleging oral copulation of a person under the age of 18 (§ 288a, subd. (b)(1)), and count ten, felonious arranging to meet a minor for lewd purposes (§ 288.4, subd. (b)). The terms of the plea agreement allowed for a maximum term of six years, with defendant afforded the opportunity to argue for probation or a lesser term. All remaining counts were dismissed with a *Harvey* waiver.² Defendant waived time for sentencing, and was permitted to remain on bond pending that proceeding.

Defendant was hospitalized in Tennessee in August 2017. Sentencing was delayed while he was being treated for cancer. Following the granting of several

¹ All further statutory references are to the Penal Code.

² *People v. Harvey* (1979) 25 Cal.3d 754, 758.

continuances, the trial court issued a no-bail bench warrant in July 2018 after defendant failed to appear at a scheduled hearing. While still in Tennessee, defendant attempted to commit suicide by taking an overdose of several of his own prescription medications.

Defendant appeared in court on September 6, 2018. The bench warrant was recalled, the bond was exonerated, and he was remanded into custody. At the bail hearing on September 10, defendant entered an *Arbuckle* waiver,³ and sentencing was set for October 10, 2018. At the sentencing hearing, following arguments of counsel and statements by the victim and her family, the court denied probation and imposed the maximum term permitted under the plea agreement, six years in state prison. That term consisted of the following terms: count ten, base term—section 288.4, subdivision (b) (lewd conduct with a minor) upper term of four years; count one—section 289, subdivision (h) (sexual penetration with a foreign object) one-third the midterm of eight months; count three—(same) one-third the midterm of eight months; and count four—section 288a, subdivision (b)(1) (oral copulation with a minor) one-third the midterm of eight months. Restitution and other terms and conditions of sentence were ordered. This appeal followed.

DISCUSSION

Counsel filed a *Wende* brief on February 13, 2019. Defendant was notified of his right to submit a supplemental brief, and his supplemental brief was filed March 14, 2019. Defendant asked this court to review his sentence. He claims the trial court imposed an excessive sentence, which he blames on errors committed by his original trial attorney. He raises the following complaints alleging ineffectiveness of counsel: (1) his attorney failed to address that the initial complaint was not signed by “a real person,” (2) his attorney did not negotiate a plea, instead accepting the deal that was offered, (3) his attorney failed to manage the trial court’s frustration caused by the multiple delays in sentencing, resulting in the court imposing the maximum sentence, (4) his attorney did

³ *People v. Arbuckle* (1978) 22 Cal.3d 749.

not assist when he told her he was going to commit suicide. We conclude these contentions have no merit.

As to the first point, the record shows that the complaint was signed by “N. Noonan Miller for LANCE HAFENSTEIN, Deputy District Attorney.” On its face, it appears that the complaint was instituted and approved by the district attorney, and not by some other unauthorized person or entity. In any event, “a complaint is merely the basis for the warrant of arrest and the commencement of the preliminary magisterial investigation. Objections thereto must be taken while the defendant is held under the warrant of arrest. After the preliminary hearing and the order holding defendant to answer to the superior court, the original complaint becomes *functus officio* [of no further force or authority].” (*People v. Mason* (1960) 183 Cal.App.2d 168, 172.) Defendant did not challenge the complaint below. Accordingly, the issue is now moot.

Regarding defendant’s second contention concerning his plea deal, when a defendant elects to waive the fundamental constitutional rights that accompany a trial by pleading guilty or no contest “the record must reflect that the defendant did so knowingly and voluntarily—that is, he or she was advised of and elected to refrain from exercising the fundamental rights in question.” (*People v. Collins* (2001) 26 Cal.4th 297, 308.) Under the governing test, a plea is valid “if the record affirmatively shows that it is voluntary and intelligent under the totality of the circumstances.” (*People v. Howard* (1992) 1 Cal.4th 1132, 1175.) Our review of the record shows defendant was adequately advised of his rights and the consequences of his plea. The record is clear defendant freely, knowingly, and intelligently waived his rights when he entered his plea.

Turning to defendant’s third contention, we note the terms of the plea agreement accorded the trial court discretion to impose up to a six-year term. We review the court’s sentencing decision under the abuse of discretion standard. (*People v. Sandoval* (2007) 41 Cal.4th 825, 847.) Under this standard, defendant bears the burden of showing that the sentencing decision was irrational or arbitrary. (*People v. Carmony* (2004) 33 Cal.4th 367, 376.) Absent such a showing, the trial court’s discretionary determination to impose a particular sentence will not be reversed on appeal. (*People v. Superior Court (Alvarez)*

(1997) 14 Cal.4th 968, 977–978.) A trial court’s “ ‘decision will not be reversed merely because reasonable people might disagree. “An appellate tribunal is neither authorized nor warranted in substituting its judgment for the judgment of the trial judge.” ’ ” (*Id.* at p. 978.)

The trial court considered several factors in arriving at defendant’s sentence, none of which were based on the delays caused by his medical treatment. During sentencing the court stated, “Now, I understand that [defendant] has health issues, and this has prolonged the sentencing in this case. And I don’t attribute that to [defendant]. It’s something that happens in life. But he has been treated for those medical issues, and now I believe he’s in a position where he’s healthy enough to stand for sentencing.” The reporter’s transcript indicates that the court’s decision to impose the maximum term allowed under the plea agreement was based on the circumstances surrounding the molestation of the victim, including the victim’s vulnerability, the criminal planning and sophistication involved in grooming her over a two-year period, and defendant’s failure to acknowledge wrongdoing early on in the proceeding. The court also elected to impose consecutive terms rather than concurrent terms based on the fact that the sexual assaults occurred at different times and in separate places, and did not result from merely a single instance of aberrant behavior. On review of the record, we cannot say the court abused its sentencing discretion.

Finally, we are not aware of any duty on the part of a criminal defense attorney to take specific action in response to a client’s threat to commit suicide.

DISPOSITION

The judgment is affirmed.

Sanchez, J.

WE CONCUR:

Margulies, Acting P. J.

Banke, J.